IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 583 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BIPINCHANRA HIRACHAND SHAH

Versus

GULAMBHAI SULAMANBHAI

Appearance:

MR DD VYAS for Petitioner

NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 28/07/2000

ORAL JUDGEMENT

1. This is landlord's revision under section 29(2) of the Bombay Rent Act(for short "Act") against the concurrent judgment and decree passed by the trial court as well by the appellate court dismissing the suit of the

plaintiff-revisionist.

2. The brief facts are that the suit for eviction of respondent was filed on the ground that the respondent was in arrears of rent for more than six months, still he failed to pay despite service of notice of demand within a period of one month from the date of service of such notice and also on the ground of illegal subletting. The tenanted premises was let out to the defendant No.1 by the plaintiff-revisionist on monthly rent of Rs.20/-. There were conditions in the tenancy that the tenant shall not keep any sub-tenant and shall pay rent regularly every month to the landlord. It is in breach of this condition the respondent-defendant fell in arrears of rent from 1.11.1976 to 31.8.1977 amounting to Rs.200/-and Rs.5/- as tax. Notice of demand, dated 19.7.1977 was served on the respondent No.1 but with no result. It was also alleged that the defendant No.1 inducted the defendant No.2 as sub-tenant and thereby violated the conditions of tenancy. On these grounds the suit for eviction, recovery of arrears of rent and mesne profits was filed.

3. The suit was resisted by the defendants on the ground that the premises was let out to the defendant No.1 who carried on business as ladies tailor while the defendant No.2 who was gents tailor right from the beginning was serving with the defendant No.1. This was well within the knowledge of the plaintiff-landlord. It was thus alleged that the defendant No.2 is not illegal subtenant, rather he was in the service of the defendant No.1 in the tailoring shop. It was also alleged that the rent was tendered and offered to the plaintiff-landlord but he refused to accept the same. After that the rent was tendered by Money Order which was refused by the landlord. The defendant No.3 is alleged to be the employee of the defendant No.1 and he remained for a short period in tailoring business and he had left the job with the defendant No.1. The dispute of standard rent was also raised by the defendant No.1. Monthly rent was initially Rs.14/- which was enhanced to Rs.20/-per month which is also excessive and the standard rent should be at Rs.14/-p.m.

4. The trial court after examining the evidence on record found that both the grounds for eviction could not be substantiated by the landlord, consequently the suit was dismissed.

5. An appeal was preferred. The appellate court also considered the material on record, judgment of the

trial court and ultimately dismissed the appeal. It is, therefore, this revision.

6. None has appeared on behalf of the respondents. Learned counsel for the revisionist was heard. Two points have been raised assailing the judgment of the two courts below. The first point has been that even if the suit for eviction was dismissed, the trial court was obliged to pass decree for arrears of rent and since this was not done the revision deserves to be allowed. It may be mentioned that the trial court while answering issue No.8 has observed that the plaintiff, interalia, filed the suit for arrears of rent and taxes amounting to Rs.205/- from the defendant No.1, but he failed to establish that the defendant No.1 was not willing and ready to pay the rent nor he neglected to make payment. It was, however, mentioned by the trial court under this issue that since the premises was used by the defendant No.1, the plaintiff is entitled to rent deposited by the defendant No.1 in the court. This direction practically amounts to decreeing the suit for recovery of arrears of rent. The amount of rent and tax deposited by the defendant No.1 in the trial can be withdrawn by the plaintiff and on such withdrawal being made it will be deemed that the decree for arrears of rent has been satisfied. Consequently, on this ground reversal of judgment and decree of the courts below is not called for.

7. So far as the findings of the two courts below are concerned, the same are based on proper appreciation of evidence on record and scope of interference in such revision under section 29(2) of the Act is very much limited. The learned counsel for the revisionist has argued that the two courts below have not properly considered the effect of Exh.33 bill and also in view of further evidence on record subletting is proved. However, it is not within the jurisdiction of the revisional court to re-appraise the evidence and come to a finding which has not been recorded by the two courts below. Revisional court can not on re-appraisal of evidence on record substitute its own findings of fact contrary to the findings recorded by the two courts.

8. On the point of tenant's unwillingness to pay the rent despite service of notice of demand, the appellate court from the evidence on record found that the defendant No.1 had sent the arrears of rent by Money Order on 8.8.1977, but the landlord had refused to accept the M.O. Even if for a moment oral offer of the rent by the defendant No.1 is disbelieved, there is no reason for

disbelieving the refusal of M.O.sent by the tenant to the landlord. No enmity with the postman has been alleged or proved. Consequently, it can not be said that the endorsement of refusal made by the postman is suspicious or unbelievable.

9. In face of this proved refusal of rent sent by M.O. the two courts below were justified in holding that the tenant did not commit default in payment of arrears of rent within a period of one month of service of notice demand. Period of notice of demand expired on 20.8.1977 whereas the rent by M.O.was sent on 8.8.1977. Therefore, finding on this issue recorded by the two courts below does not require interference.

10. So far as the question of subletting is concerned it is also finding of fact recorded by the two courts below on proper appreciation of evidence. The allegation was that the defendant No.1 had sublet the accommodation to the defendant Nos 2 and 3. Definite explanation has come from the side of tenant-defendant No.1 that the defendant No.2 had subsequently sublet the accommodation to the defendant No.3. However, in the course of trial the plaintiff had withdrawn the allegation of subletting by the defendant No.2 to defendant No.3. It was explained from the side of the tenant that the defendant No.3 was employee of the defendant No.1 for a short period. However, when the plea of subletting to defendant No.3 was given up by the plaintiff-landlord he can not succeed on this ground.

11. Now, remains the question of subletting by the defendant No.1 to the defendant No.2. It has been argued by the learned counsel for the revisionist that the bill Exh.33 was not properly appreciated by two courts below, especially by the lower appellate court. The stand of the defendant No.1 was that right from the beginning when the tenancy was created the defendant No.2 was employed as an employee for carrying on gents tailoring business in the shop whereas the defendant No.1 was engaged in carrying on ladies tailoring business in the shop. Admittedly, the tenancy was created before the plaintiff became the owner of the shop in 1973. The plaintiff-Bipinchandra Hiralal Shah had to admit in cross-examination that he became the owner of the shop in the year 1973 and he could not say as to what was the position prior to 1973. In face of this ignorance on the part of the landlord there is no reason to disbelieve the positive version of the defendant No.1 that the defendant No.2 was his employee.

12. Landlord can succeed in establishing the plea of illegal subletting only by establishing that it was a case of exclusive transfer of possession of the premises or a portion thereof to the subtenant and that such transfer was for valuable consideration. There is no iota of evidence on transfer of exclusive possession to the defendant No.2 or that such transfer to the defendant No.2 was for valuable consideration nor is there any cogent and reliable evidence that the transfer of possession was exclusive even in respect of part of demised premises. The plaintiff has tried to place reliance upon bill Exh.33, dated 19.10.1976. In this, the name of business is shown as "Gents and Ladies Tailor" and the proprietor is shown as Sri Chhaganlal L.Patel. It was not a bill or correspondence issued to the landlord. On the other hand, the bill was issued to the customer. Even if it bears the signature of Chhaganlal L.Patel, namely, the defendant No.2, it can not be said that it was a case of subletting. Chhaganlal had explained in his statement that he was working as employee of the defendant No.1. He further explained that some disputes arose between the defendant No.1 and the defendant No.2 with regard to labour charges, hence, behind the back of the defendant No.1 he got a printed bill book prepared, but immediately he realised his folly and stopped issuing bills on such printed form. It is further revealed in his cross-examination that in the year 1978-79 he had gone to Navsari for doing his own business, but as he could not succeed in that venture, he had come back to the defendant No.2 as his employee. This evidence was also found by the lower appellate court to be believable. It is very difficult to accept the contention that the bill Exh.33 was not read in its correct perspective by the lower appellate court. The lower appellate court has clearly observed that considering all the aspects of the case, bill Ex.33 loses all its weight and it can not be accepted as conclusive piece of evidence to show exclusive possession of the suit premises by the defendant No.2 in the capacity of proprietor of business run in the suit premises. Hence, there is no case or ground for interference with the findings of the lower appellate court.

13. In view of the above discussions, I do not find any ground for interference with the findings of the two courts below on the point of tenant's default in payment of rent and also on the allegation of subletting. I, therefore, do not find any merit in this revision. The revision is, therefore, dismissed with no order as to costs.

28.7.2000 (D.C.SRIVASTAVA,J)